

Submitted Electronically – e-ORI@dol.gov and e-OED@dol.gov



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Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

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**Re: Conflict of Interest Rule (RIN 1210-AB32);
Best Interest Contract Exemption (ZRIN 1210-ZA25)**

Dear Sir or Madam:

CNL Financial Group, Inc. (“CNL”) appreciates the opportunity to comment on the Conflict of Interest Rule proposal (the “Proposal”) and the related Best Interest Contract Exemption (the “BIC Exemption”) published by the U.S. Department of Labor (the “Department”) in the Federal Register on April 20, 2015.

CNL is a private alternative investment management firm currently advising several non-traded real estate investment trusts and non-traded business development companies. CNL is headquartered in Orlando, Florida and currently has over 300 employees. Since its inception in 1973, CNL and/or its affiliates have formed or acquired companies with more than \$33 billion in assets. CNL has invested through various market cycles in a broad range of industries, asset classes and geographies, including investing in and lending to companies operating in the retail, restaurant, health care, hotel, leisure, recreation, financial services and insurance industries. Over the last 42 years in business, CNL has received over \$17.5 billion dollars in investments from over 550,000 investors, of which approximately 50% have constituted retirement accounts. As currently drafted, we are very concerned about the potential detrimental impact the Proposal and BIC Exemption will have on our business.

In addition to our specific comments below, we also want to associate ourselves with, and formally endorse, the comment letters filed by the Investment Program Association, the National Association of Real Estate Investment Trusts, the Small Business Investor Alliance, the U.S. Chamber of Commerce and the Financial Industry Regulatory Association (“FINRA”). We feel that these letters raise very important points regarding the Proposal and BIC Exemption that the Department should consider during its development of any final rule.

In response to the Department’s specific request for comments on the proposed definition of “Assets” under the BIC exemption, CNL respectfully urges the Department to consider

the inclusion of non-traded business development companies (“BDCs”) and non-traded real estate investment trusts (“REITs”) as Assets within the BIC exemption. We further submit that this change be accomplished either by the removal of the entire delineated list of all investment products from the definition of “Assets” altogether or by the inclusion of BDCs and REITs within the scope of the current definition. Furthermore, as requested by the Department, we set forth a brief description of the characteristics and fee structures associated with BDCs and REITs as well as data supporting the position that the product is a common investment for retail investors below. We further submit that both BDCs and REITs are a valuable portfolio addition providing yield and diversification benefits for retirement investors.

Under the existing definition of Assets, the Department lists only certain types of investments. By having a “fixed” list of investments permitted under the exemption, we are concerned that this creates an unnecessary regulatory hurdle for product types and product innovations that may be appropriate for retirement investors in the future. Furthermore, investments not on the list cannot be the subject of any advice or discussion provided in connection with the exemption. We feel this is problematic as many advisors would be effectively prohibited from being able to discuss many existing investments a retirement investor has at all, no matter how much doing so might be in the best interests of their clients. We submit that the Department should remove the delineated list of investments altogether. We submit that existing regulatory requirements and fiduciary law provide sufficient investor safeguards without the need for a delineated list of investments under the exemption. However, if the Department determines to keep the existing definition of “Assets,” we request that BDCs and REITs are also included as set forth below.

A BDC is a closed-end investment company that is regulated under a specialized regime of the Investment Company Act of 1940 (“1940 Act”). BDCs also register their offerings of securities under the Securities Act of 1933 (“1933 Act”) in order to sell to retail investors. BDCs generally make investments in private or public companies in the form of long-term debt and/or equity capital, with the goal of generating current income or capital growth. BDCs provide a valuable opportunity for retail investors to access yield and diversification by lending to small and middle-market businesses in the United States. A REIT is an investment vehicle that directly invests in real estate on a tax-advantaged basis. REITs also register their offerings of securities under the Securities Act of 1933 in order to sell to retail investors. REITs are also subject to certain IRS requirements, including distributing at least 90 percent of taxable income to shareholders annually. REITs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors, including office, industrial, apartment, retail, health care, self storage, data center and hotels. BDC and REIT offerings are also subject to regulatory oversight by FINRA, and the relevant state securities regulatory authorities.

While many business development companies and real estate investment trusts are sold in a one-time initial public offering and listed on a national securities exchange, non-traded BDCs and REITs are sold in an extended continuous offering period to retail investors,

primarily through broker-dealers that are registered with the SEC, FINRA, and the relevant state securities regulatory authorities. Broker-Dealers provide on-going compliance and due diligence, record keeping, investor suitability determinations of a recommendations, and on-going account maintenance services for retirement investors in BDCs and REITs.

BDC and REIT investments are not only common investments for retail investors generally, but are also common investments for IRAs. We respectfully direct the Department to the comment letter submitted by the Investment Program Association for specific BDC and REIT industry information to support this statement. Specifically for CNL, as of March 31, 2015, we had approximately 200,000 investor accounts holding BDC and/or REIT investments, of which, approximately 60% were retirement accounts. As investments which are less correlative to the trading markets and exchanges, BDCs and REITs offer important diversification benefits and protection against market volatility for retirement investors as they are less likely to move in the same direction based on market and other forces.

There are a variety of fees associated with the ownership of BDCs and REITs. BDC and REIT distribution fees typically include up-front selling commissions, are specifically regulated under FINRA Rule 2310, and are deemed “unreasonable” if such fees exceed established regulatory limits based on a percentage of gross proceeds raised in the continuous offering. Additionally, BDCs typically pay to their investment advisor an asset management fees on a percentage of the gross assets, incentive fees on income typically conditioned on achievement of a return hurdle rate, and incentive fees on capital gains. Additionally, REITs typically pay to their investment adviser (or their affiliates) asset management fees on a percentage of the value of the REIT’s real estate holdings and loans, investment services fees and acquisitions fees for the selection, evaluation, structuring and purchase of real estate assets, property management fees, construction management fees, financing coordination fees, disposition fees for the sale of REIT assets and performance or incentive fees paid to the REIT’s investment adviser and its affiliates.

Although the Department has expressed some concern about the transparency of retirement investments, both BDCs and REITs are subject to a robust regulatory framework ensuring investor transparency of fees and pricing. In fact, recent amendments to FINRA Rule 2310 and NASD 2340 will require new reporting methods utilizing net asset value or the estimated per-share value is shown on a BDC or REIT customer account statement. The key points of the amendments involve the transparency of all fees associated with BDCs and REITs, the improvement of the reliability of valuations on customer account statements, and increased frequency of REIT valuations and pricing. With respect to REITs, the rule amendments will also prohibit broker-dealers from participating in a public offering of a REIT unless the issuer has agreed to disclose a per-share estimated value in its periodic filings that has been developed in a manner reasonably designed to ensure its reliability. Additionally, REITs will now be required to conduct third-party valuations of their portfolios within approximately two and a half years from commencement of the offering as well as annually thereafter.

BDCs must determine and publish their net asset value on a regular basis. More specifically, consistent with 1940 Act requirements, the BDC's board of directors or trustees is required to: (i) adopt valuation policies and procedures that are consistent with the requirements of ASC Topic 820 Fair Value Measurements and Disclosure, (ii) value the a BDC's portfolio securities and establish a net asset value ("NAV"), and (iii) publish such NAV at least quarterly. As part of this process, each debt and equity security is separately valued and disclosed on a "Schedule of Investments" contained in a BDC's financial statements. Additionally, a BDC's independent registered public accounting firm audits the schedule after it is included in it the quarterly and annual reports. Importantly, we also note that the 1940 Act prohibits BDCs (and other 1940 Act companies) from selling their shares at a price below NAV, after deducting selling commissions and dealer manager fees.

We also note that the Department has also expressed some concern about the liquidity of retirement investments. Although BDCs and REITs are designed to be long-term investments, BDCs and REITs almost always include a product feature for liquidity for share redemptions or tender offers prior to the ultimate BDC or REIT liquidity event. We also respectfully submit that both BDCs and REITs have a history of honoring redemption requests with little or no penalty, depending on the timing and circumstances. Finally, we also note that while certificates of deposit and variable annuity contract investments are typically not considered to be liquid investments, the Department has already included both of these investments within the scope of the BIC exemption.

We request that the Department include BDCs and REITs in the scope of the BIC Exemption. In our view, BDCs and REITs are a common investment for both retail and retirement investors, provide valuable yield and diversification benefits, and, given the existing robust regulatory framework and recent amendments to the BDC and REIT customer statement rules, have appropriate investor safeguards in place to ensure transparency and reasonable distribution and offering fees. We would like to extend our appreciation for the opportunity to comment on the Proposal and the BIC Exemption.

Thank you for your consideration of these very important concerns.

Respectfully Submitted,

CNL Financial Group, Inc.



Thomas K. Sittema
Chief Executive Officer